IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.728 OF 2006
WITH
CIVIL APPLICATION NO.1226 OF 2006

Sharad Babu Misal & Ors. .. Appellants.
Vs.
Shivaji Bhimrao Mane .. Respondent.

Mr.R.A.Thorat for the appellants.
Mr.V.K.Choudhary for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 1ST OCTOBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. This second appeal is directed against concurrent judgments of the courts below by which a suit filed by the respondents-plaintiffs for permanent injunction restraining the appellants-defendants from interfering with the possession over suit Gat No.203 bearing Old Survey No.48/1B admeasuring 1 hectare and 20 Ares (for short "suit land") stands decreed.

3. Mr.Thorat, learned counsel for the appellants submitted that the courts below have not appreciated the evidence on record in proper perspective. He submitted that the suit land was allotted to the

appellants they being the landless persons. The suit land, according to Mr.Thorat, was acquired by the Government under the Land Ceiling Act and was then allotted to the appellants-defendant no.3 vide mutation entry No.62 dated 14.5.1976. He then submitted that mutation entery no.62 clearly shows that the suit land was allotted to defendant no.3 and that the defendants were in possession thereof since beginning. The courts below have not considered the documentary evidence produced on record in proper perspective and, therefore, the findings of facts recorded by the courts below are perverse.

4. From perusal of the impugned judgments so also other material placed before me it reveal that the plaintiff claims to be the owner of the suit property and possession thereof through his mother. This, according to the plaintiff, is their ancestral property and it was mutated in his name vide mutation entry No.8224 and he has been cultivating it since 1980. Further, the case of the plaintiff is that the scheme of consolidation was made applicable to their village in which the suit property bearing survey No.48/1B was converted into Gat No.203 vide mutation entry No.1152 and he continued to be in possession thereof without any interruption.

5. Admittedly, city survey No.48/1-B was converted into Gat No.203. The record reveals that adjoining Gat No.48/1A was given new Gat No.202/B situated towards northern side of the suit land and was acquired by the Government under the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 and was allotted to defendant no.3 vide mutation entry No.62 dated 14.5.1966. It appears that in 1997, defendant no.3, the allottee of the land bearing Gat No.202/D, sold it to defendant no.2 in contravention of the provisions of the Ceiling Act and, therefore, the Government had taken its possession. It is against this backdrop the contention of Mr.Thorat that mutation entry no.62 clearly shows that suit land bearing old survey No.48/1-B i.e. new Gat No.203 was allotted to the appellants doesn't appear to be correct. The appellants are taking advantage of some error committed while affecting mutation entry no.62 wherein new Gat No.202/D was shown against survey No.48/1B. As a matter of fact survey No.48/1B was converted into Gat No.203 and Gat No.202/D was converted from original survey no.48/1A. In the course of arguments though Mr.Thorat urged that survey No.48/1B and Gat No.202/D is one and the same land, he could not show the order of allotment of this land in favour of defendant no.3. After taking inspection of the entire record he fairly

stated that there is no such order and only document which supports his contention is mutation entry no.62. Considering the overall facts and circumstances of the case it is clear that the land allotted to defendants was not Gat No.203. The courts below and more particularly the appellate court in paragraphs 13, 16 and 18 have considered this aspect and have recorded findings accordingly. The findings of fact, in my opinion, are based entirely on evidence on record and, therefore, deserve no interference by this court in the present appeal. The second appeal accordingly fails and is dismissed as such. The request for continuing the order of status quo is rejected.

(D.B.BHOSALE, J.)